Supreme Court, U.S.
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No. 01-463

In the Supreme Court of the United States

UNITED STATES OF AMERICA, PETITIONER

v.

FIOR D'ITALIA, INC.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF FOR THE UNITED STATES

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Respondent does not deny that there is an irreconcilable conflict among the circuits on the question presented in this case. Respondent instead submits that the appellate decisions that have disagreed with "the sound judgement of the Ninth Circuit" in this case simply reached the wrong conclusion. Br. in Opp. 17. Although respondent asserts that the appellate decisions that conflict with the decision in this case are "certainly in need of correction," respondent suggests that the "correction" of these conflicting decisions should not be done yet, but should instead "wait the resolution" of other cases presenting the same issue that are now pending in other circuits. *Ibid.*

In short, respondent acknowledges that there is a current conflict involving several circuits on this recurring issue and that the litigation involving this issue continues to spread into additional courts. The fact that respondent disagrees with the decisions of other circuits on the merits does not eliminate or diminish the need for resolution of this recurring issue by this Court. As we explain in the petition, the question presented in this case has significant and widespread importance, for it affects numerous taxpayers and involves a "substantial amount of revenue." Pet. App. 17a; see Pet. 19.

* * * * *

For these reasons, and the additional reasons set forth in the petition, it is therefore respectfully submitted that the petition for a writ of certiorari should be granted.

THEODORE B. OLSON
Solicitor General

NOVEMBER 2001